

**DURHAM, NORTH CAROLINA
MONDAY, FEBRUARY 18, 2013
7:00 P.M.**

The Durham City Council met in regular session on the above date and time in the Council Chambers at City Hall with the following members present: Mayor William V. Bell, Mayor Pro Tempore Cora Cole-McFadden and Council Members Eugene Brown, Diane Catotti, Howard Clement, III, Don Moffitt and Steve Schewel. Absent: None.

Also present: City Manager Thomas J. Bonfield, City Attorney Patrick Baker, City Clerk D. Ann Gray and Deputy City Clerk Linda Bratcher.

Mayor Bell called the meeting to order with a moment of silent meditation followed by the pledge of allegiance led by Council Member Clement.

Mayor Bell asked for priority items by the City Manager, City Attorney and City Clerk. There were no priority items by the City Manager and City Attorney.

City Clerk Gray stated valid protest petitions have been filed against General Business Agenda Items #15 [Zoning Map Change -Victorious Praise Fellowship Church] and Item #16 [Zoning Map Change – 2125 Guess Road 2]. In addition, invalid protest petition filed against General Business Agenda Item #18 [Zoning Map Change – Southpoint Trails].

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Schewel to accept the City Clerk's priority items was approved at 7:04 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Moffitt and Schewel. Noes: None. Absent: None.

Mayor Bell explained that the Consent Agenda is approved with a single motion and items pulled from that agenda by any citizen or council member will be discussed at the end of the agenda. Item #11 [Contract with River Works, Inc. for Stream Restoration Project Invasive Exotic Vegetation Treatment] was pulled from the Consent Agenda.

MOTION by Council Member Schewel seconded by Council Member Catotti to approve the Consent Agenda as amended was approved at 7:06 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Moffitt and Schewel. Noes: None. Absent: None.

[CONSENT AGENDA]

SUBJECT: Approval of City Council Minutes

MOTION by Council Member Schewel seconded by Council Member Catotti to approve City Council minutes for the January 7, 2013 City Council Meeting, January 10, 2013 City Council

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Work Session, January 22, 2013 City Council Meeting and January 24, 2013 City Council Work Session was approved at 7:06 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Moffitt and Schewel. Noes: None. Absent: None.

SUBJECT: Durham Performing Arts Center Oversight Committee - Appointments

MOTION by Council Member Schewel seconded by Council Member Catotti to reappoint Edward M. Binanay representing the category of Business and Marty Belin representing the category of Finance to the Durham Performing Arts Center Oversight Committee with the terms to expire on March 1, 2016 was approved at 7:06 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Moffitt and Schewel. Noes: None. Absent: None.

SUBJECT: Street Acceptances - Stoneybrook Cottages - Woodlands Preserve – Phase II

MOTION by Council Member Schewel seconded by Council Member Catotti to accept the streets as listed for maintenance by the City of Durham was approved at 7:06 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Moffitt and Schewel. Noes: None. Absent: None.

Stoneybrook Cottages

- 1) Brook Chase Lane – from the end of existing construction @ STA 1+55.75 northwest through the cul-de-sac (702'), and
- 2) Fox Run Court – from the centerline of Brook Chase Lane around the circle and back to the centerline of Brook Chase Lane (496'), and
- 3) Hay Sedge Court – from the centerline of Brook Chase Lane northeast to the end of the hammerhead tee (224'.)

Woodlands Preserve – Phase II

- 1) Sassafras Hill Street – from the end of existing construction @ STA 10+00 southwest through the cul-de-sac (270'), and
- 2) Moss Spring Court – from the centerline of Sassafras Hill Street northwest through the cul-de-sac (155'.)

SUBJECT: Interlocal Agreement between the City of Durham and Durham County for the Sharing of Sales Tax Revenue

MOTION by Council Member Schewel seconded by Council Member Catotti to authorize the City Manager to execute a five year interlocal agreement with Durham County for the sharing of sales tax revenue was approved at 7:06 p.m. by the following vote: Ayes: Mayor Bell, Mayor

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Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Moffitt and Schewel. Noes: None. Absent: None.

SUBJECT: FY2012-13 Amendments to the Budget Ordinance, Capital Improvement Program Ordinance and Grant Project Ordinances

MOTION by Council Member Schewel seconded by Council Member Catotti to adopt a budget ordinance amending the City of Durham Budget Ordinance as amended, Fiscal Year 2012-13, the same being Ordinance #14302; **Ordinance #14389**

To adopt the 2009 American Recovery and Reinvestment Act (ARRA): Edward Byrne Memorial Justice Assistance Grant (JAG) GPO Superseding GPO #13856; **Ordinance #14390**

To adopt the 2009 ARRA: Combating Criminal Narcotics Activity Stemming from the Southern Border of the United States GPO Superseding GPO #13883; **Ordinance #14391**

To adopt the FY 2013 North Carolina Tennis Association Raise the Net Grant Project Ordinance (GPO); **Ordinance #14392**

To adopt the 2009 ARRA Renaissance Parkway and American Tobacco Trail Traffic Signal GPO Superseding GPO # 13828; **Ordinance #14393**

To adopt the 2009 ARRA Northpointe Drive and Home Depot Traffic Signal GPO Superseding GPO # 13829; **Ordinance #14394**

To adopt the 2009 ARRA Renaissance Parkway and Southpoint Mall Traffic Signal GPO Superseding GPO # 13830; **Ordinance #14395**

To adopt the 2009 ARRA William Penn and Ben Franklin Traffic Signal GPO Superseding GPO # 13831; **Ordinance #14396**

To adopt the 2009 ARRA Traffic Signal Upgrades GPO Superseding GPO # 13834; **Ordinance #14397**

To adopt the 2011 High Intensity Drug Trafficking Areas (HIDTA) GPO Superseding GPO #14228; **Ordinance #14398**

To adopt the FY 2012 North Carolina Department of Natural Resources (NCDENR) Waste Reduction GPO; **Ordinance #14399**

To adopt an Ordinance Amending the Capital Improvements Project Ordinance as amended, the same being Ordinance # 14286 was approved at 7:06 p.m. by the following vote: Ayes: Mayor

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Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Moffitt and Schewel. Noes: None. Absent: None.

Ordinance #14400

SUBJECT: Bids - Annual Vehicle Requirements - Sir Walter Chevrolet - University Ford - Butler Chrysler/Dodge/Jeep - Ilderton Dodge

MOTION by Council Member Schewel seconded by Council Member Catotti to authorize the City Manager to enter into a contract with Sir Walter Chevrolet in the amount of \$60,440.00 for providing the City with two (2) Police Patrol/Pursuit 4x4 Vehicles (item no.13);

To authorize the City Manager to enter into a contract with University Ford in the amount of \$228,030.00 for providing the City with one (1) 6,500 GVWR Regular Cab 4x4 Pickup Truck (item no.4), two (2) 10,000 GVWR Regular Cab 2x4 Pickup Trucks (item no.5), two (2) 10,000 GVWR Regular Cab 4x4 Pickup Trucks (item no.6), one (1) 10,000 GVWR Crew Cab 2x4 Pickup Truck (item no.7), two (2) 10,000 GVWR Extended Cab 4x4 Pickup Trucks (item no.8), and one (1) 19,500 GVWR Crew Cab 4x4 Cab & Chassis Truck (item no.9);

To authorize the City Manager to enter into a contract with Butler Chrysler/Dodge/Jeep in the amount of \$408,384.00 for providing the City with sixteen (16) Police Rear Wheel Drive Patrol Vehicles (item no.10);

To authorize the City Manager to enter into a contract with Ilderton Dodge in the amount of \$82,037.00 for providing the City with two (2) 4-Door Administrative Sedans (item no.1), one (1) Police Rear Wheel Drive Patrol Vehicle (item no.11), and one (1) Police Rear Wheel Drive Unmarked Vehicle (item no.12) was approved at 7:06 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Moffitt and Schewel. Noes: None. Absent: None.

SUBJECT: Right-of-Way Mowing, Litter and Debris Removal Contract Rowm13 - Dixie Lawn Service, Inc.

MOTION by Council Member Schewel seconded by Council Member Catotti to authorize the City Manager to execute a contract with Dixie Lawn Service, Inc. for Contract ROWM13 Right-of-Way Mowing and Litter and Debris Removal with a three year estimated cost of \$1,006,000.00; and

To authorize the City Manager to modify the agreement before execution provided that the modifications do not increase the dollar amount of the agreement and that the modifications are consistent with the general intent of the existing version of the agreement;

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To authorize the City Manager the right to extend the Contract upon the same terms and conditions for a period equal to the original contract. Such extensions of work may be at any point where extensions are authorized by agreement of both parties was approved at 7:06 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Moffitt and Schewel. Noes: None. Absent: None.

SUBJECT: Proposed Sale of Property Located at 1127 Midland Terrace, to the Estate of Thelma Louise Whitt White

MOTION by Council Member Schewel seconded by Council Member Catotti to declare parcel #130198 surplus property;

To authorize the sale of parcel #130198 by private sale to the Estate of Thelma Louise Whitt White under the authority of Section 86 of the City Charter;

To accept the offer of \$250.00 from the Estate of Thelma Louise Whitt White to purchase parcel #130198; and

To authorize the City Manager to sell and the Mayor convey parcel #130198 by non-warranty deed was approved at 7:06 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Moffitt and Schewel. Noes: None. Absent: None.

SUBJECT: Expedited Hearing Request for Whitted School (Zoning Case Z1200028)

MOTION by Council Member Schewel seconded by Council Member Catotti to adopt a Resolution Granting an Expedited Hearing per Section 3.5.11.B of the Unified Development Ordinance for Zoning Map Change Request Z1200028 (Whitted School) was approved at 7:06 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Moffitt and Schewel. Noes: None. Absent: None.

Resolution #9844

SUBJECT: Grant Project Ordinance Receiving Congestion Mitigation and Air Quality (CMAQ) Funds for Bull City Connector

MOTION by Council Member Schewel seconded by Council Member Catotti to adopt FTA 5307 Congestion Mitigation and Air Quality Grant Project Ordinance was approved at 7:06 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Moffitt and Schewel. Noes: None. Absent: None.

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Ordinance #14401

SUBJECT: Amendments to the City of Durham's Enforcement Response Plan

MOTION by Council Member Schewel seconded by Council Member Catotti to adopt the proposed amended Enforcement Response Plan for the City of Durham was approved at 7:06 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Moffitt and Schewel. Noes: None. Absent: None.

[GENERAL BUSINESS AGENDA - PUBLIC HEARINGS]

SUBJECT: Zoning Map Change - Victorious Praise Fellowship Church (Z1200014)

To conduct a public hearing to receive comments on the zoning map change for Victorious Praise Fellowship Church (Z1200014);

To adopt an Ordinance Amending the Unified Development Ordinance by taking the described property in zoning map change case Z1200014 out of Planned Development Residential 4.470 (PDR-4.470) and placing same in and establishing same as Residential Suburban-8 (RS-8); and

To adopt as support for its action on the proposed zoning map change the determinations that the action is consistent with the Comprehensive Plan and is reasonable and in the public interest in light of information presented in the public hearing and in the accompanying agenda materials;
or

Alternatively, in the event that a motion to approve the item fails, the Council adopts as support for its action on the proposed zoning map change the determination that, notwithstanding its consistency with the Comprehensive Plan, the request is neither reasonable nor in the public interest in light of information presented in the public hearing and in the accompanying agenda materials.

Staff Determination: Staff determines that this request is consistent with the Unified Development Ordinance, the Comprehensive Plan and other adopted policies and ordinances.

Planning Commission Recommendation and Vote: Approval, 14-0 on November 13, 2012. The Planning Commission finds that the ordinance request is consistent with the adopted Comprehensive Plan. The Commission believes the request is reasonable and in the public interest and recommends approval based on comments received at the public hearing and the information in the staff report.

[The site is located at 2116 Page Road, north of Page Road Extension and south of Angier Avenue, PINs 0759-04-43-6257, 0759-03-43-0284]

Note: Valid Protest Petition filed.

Pat Young, of the City/County Planning Department, briefed Council on the zoning map change for Victorious Praise Fellowship Church which was continued from the January 22, 2013 City Council Meeting. He stated the applicant is requesting to change the zoning designation of 9.88 acres within the City at 2116 Page Road from its present zoning designation of Planned Development Residential 4.47 to the requested zoning designation of Residential Suburban-8 which would allow for the expansion of the existing place of worship assuming approval of this request and receipt of the minor special use permit from Board of Adjustment. He stated staff has determined that this request is consistent with the Comprehensive Plan and other adopted policies and ordinances and the Planning Commission recommended approval at its November 13, 2012 meeting.

Mayor Bell opened the public hearing.

Proponents

Dan Jewell, representing the applicant, commented on recent neighborhood meeting and felt that they have reached an accommodation regarding the buffer width with the commitment to never build in that buffer which would be indicated on special use permit application.

Paul Pope, President of the Kingsley Woods Neighborhood Association, stated they met with the church on numerous occasions and if the church would do the 48-foot buffer—nothing built on it at anytime and soundproofing of building they should be okay.

Dan Jewell, representing the applicant, stated they are on record that all conditions/committed elements would be indicated on the special use permit application as well as the resubmitted site plan. He explained how the building and the new worship facility would be sound proofed. Mr. Jewel stated the applicant committed to increasing landscape buffer along the Kingsley Woods side from 24 feet to a minimum of 48 feet and in that entire buffer width and the church would put a condition on the special use permit that they shall never build within that buffer.

Council Member Catotti asked the applicant if the new worship facility would have its own internal sound insulation.

Dan Jewell, representing the applicant, replied yes. He stated they committed to a well insulated building—insulation and maybe brick to knock out sound.

For clarification, Council Member Moffitt noted because there is no development plan, there are no commitments legally enforceable by the Planning Department; however, he wrote them down for future reference if the applicant does not live up to their commitments.

Pat Young, of the City/County Planning Department, stated staff would provide the Board of Adjustment with representations made by the applicant.

No one spoke against this item. Mayor Bell closed the public hearing.

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MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Brown to receive comments on the zoning map change for Victorious Praise Fellowship Church (Z1200014);

To adopt an Ordinance Amending the Unified Development Ordinance by taking the described property in zoning map change case Z1200014 out of Planned Development Residential 4.470 (PDR-4.470) and placing same in and establishing same as Residential Suburban-8 (RS-8); and

To adopt as support for its action on the proposed zoning map change the determinations that the action is consistent with the Comprehensive Plan and is reasonable and in the public interest in light of information presented in the public hearing and in the accompanying agenda materials was approved at 7:16 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Moffitt and Schewel. Noes: None. Absent: None.

Ordinance #14402

SUBJECT: Zoning Map Change - 2125 Guess Road 2 (Z1200006)

To conduct a public hearing to receive comments on the zoning map change for 2125 Guess Road 2 (Z1200006);

To adopt an Ordinance Amending the Unified Development Ordinance by taking the described property in zoning map change case Z1200006 out of Office Institutional (OI), and Residential Urban - 5 (RU-5) and placing same in and establishing same as Commercial Neighborhood with a development plan (CN(D)) and Residential Urban - 5 with a development plan (RU-5(D)); and

To adopt as support for its action on the proposed zoning map change the determinations that the action is consistent with the Comprehensive Plan and is reasonable and in the public interest in light of information presented in the public hearing and in the accompanying agenda materials; or

Alternatively, in the event that a motion to approve the item fails, the Council adopts as support for its action on the proposed zoning map change the determination that, notwithstanding its consistency with the Comprehensive Plan, the request is neither reasonable nor in the public interest in light of information presented in the public hearing and in the accompanying agenda materials.

Staff Determination: Staff determines that this request is consistent with the Unified Development Ordinance, the Comprehensive Plan and other adopted policies and ordinances.

Planning Commission Recommendation and Vote: Denial, 7-7 on November 13, 2012. The Planning Commission finds that the ordinance request is consistent with the adopted Comprehensive Plan. However, the Commission believes the request is not reasonable nor in the

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public interest and recommends denial based on inconsistency with neighboring land uses and opposition from the community.

[The site is located at 2125 and 2131 Guess Road, north of Broad Street and Sunset Avenue, PINs 0822-06-37-6672, 0822-06-37-6636]

Note: Valid protest petition filed.

Patrick Young, of the City/County Planning Department, briefed Council on the zoning map case for 2125 Guess Road 2. He stated the applicant is requesting to change the zoning designation of 0.348 acres within the City at 2125 and 2131 Guess Road from its present zoning designation-- Office/Institutional and Residential Urban-5 to the requested zoning designation of Commercial Neighborhood and Residential Urban-5 with a development plan that would allow retail uses at the site. Mr. Young summarized associated commitments to include:

- A maximum of 1,250 square feet of building area for the RU-5 zoned portion of the site
- A maximum of 1,500 square feet of building area for the CN-zoned portion of the site
- Maintain the residential appearance of the commercially-zoned building

He stated staff has determined that this request is consistent with the Comprehensive Plan and other adopted policies and ordinances and the Planning Commission recommended denial at its November 13, 2012 meeting.

Mayor Bell opened the public hearing.

Proponents

Robert Shunk, representing the applicant, referenced additional commitments submitted by the neighbors to the City. He stated the applicant is requesting a continuance of this item to work with the neighbors regarding a 15-foot buffer between the two parcels since there is a move ability conflict at both driveways. He stated the applicant is in opposition of having the 15-foot buffer between two parcels, but support the 15-foot buffer to the rear.

For clarification, Patrick Young, of the City/County Planning Department, stated that staff received nine draft commitments that were reviewed by staff with comments. He stated nothing has been proffered at this time and the Planning Director determined that the applicant needed to proffer commitments to be considered for a continuation.

Mayor Bell explained why he would support an opportunity for neighbors and developers to work together to come up with a compromise.

George Bourbous, son of property owner, spoke in support of this request. He made comments regarding meetings held with Mr. Robert Shunk, Mr. Tom Miller and neighbors. He urged Council to continue this item because progress has been made, referenced his landlord experience in Durham for 42 years, explained why they have been unable to rent property,

expressed crime concerns and noted additional time would be needed to discuss buffer concerns raised by neighbors.

Opponents

Tom Miller, representing the Watts Hospital - Hillandale Neighborhood Association, stated they oppose the continuance of this item because there is no agreement on paper and the applicant does not want to complete some of the things requested by the Association. He stated this case is now 18 months old and time for negotiation is long past due. Also, he read a brief statement from the Association in opposition to this request raising a concern with the CN [commercial neighborhood] zone and asked Council to vote against this rezoning tonight.

Kay Ringer, representing the Watts Hospital – Hillandale Neighborhood Association, stated this has been an 18-month ordeal, said they are not opposed to change that would be well thought out, protects all parties involved and addresses immediate and long term needs. She made comments on the meetings and proposal presented to the developer and staff, and asked that this matter to be resolved.

Chris Rusconi, representing the Watts Hospital – Hillandale Neighborhood Association, urged Council to oppose this zoning map change without continuation. He gave three reasons why this item should be over tonight—highlighting the investment by property owners, future land use plan—residential use, and buffering plan.

Rebuttal

Robert Shunk, representing the applicant, stated that the applicant has agreed to proffers made by the neighborhood except for the disagreement of the 15-foot wide buffer between two parcels of Mr. Bourbous. He stated the applicant would be willing to put up a fence, some shrubbery, but not 15-feet of shrubbery and the applicant is requesting additional time to resolve driveway conflict. He shared options of addressing the buffer issue.

Mayor Bell asked the applicant if that is the only issue [buffer] that needs to be resolved.

Robert Shunk, representing the applicant, stated, the applicant is in agreement with commitments provided by the neighborhood except for one item which was a misunderstanding on the intent so; therefore, they are requesting a continuance to work on that item.

Nick Bourbous, owner, expressed concerns with break-ins and not being able to satisfy neighbors due to constant changing of proposal. He stated 90% of Guess Road is commercial and he urged Council to support this zoning map change.

Tom Miller stated their proposal has not changed since it was presented to Mr. Shunk on January 9th.

Mayor Bell spoke in support of allowing additional time for the developer to meet with the neighbors since this is the first time that Council has heard this matter.

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Council Member Brown spoke against continuing this item after a one year and a half discussion and felt that the two sides would not reach an agreement.

Patrick Young reported this plan was submitted a year and half ago without a development plan as a straight CN zoning. After the Planning Commission review, they recommended denial and made a suggestion for the developer to resubmit item with a development plan that occurred in March or April 2012.

Council Member Brown stated this item should be voted on tonight.

Council Member Catotti asked the applicant if they wanted to continue negotiations on the buffer.

Robert Shunk, representing the applicant, replied yes.

Council Member Moffitt asked questions regarding commitments made by the applicant.

Council Member Schewel stated that he cannot support this rezoning because the buffer is important, but would support the two-week deferral.

City/County Planning Director Steve Medlin asked that this item be continued for two cycles to allow staff time to evaluate committed elements.

MOTION by Council Member Schewel seconded by Mayor Pro Tempore Cole-McFadden to continue the public hearing on this item to the March 18, 2013 City Council Meeting was approved at 8:00 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Catotti, Clement and Schewel. Noes: Council Members Brown and Moffitt. Absent: None.

SUBJECT: Unified Development Ordinance Text Amendment, Temporary Uses: School Modular Classrooms (TC1200009)

To conduct a public hearing to receive comments on the Unified Development Ordinance Text Amendment, Temporary Uses: School Modular Classrooms (TC1200009); and

To adopt an Ordinance Amending the Unified Development Ordinance, incorporating revisions to Article 5, Use Regulations.

Recommendations: The Staff recommends approval. The Planning Commission recommended approval, 12-0, at the December 11, 2012, meeting.

City/County Planning Director Steve Medlin verified that all public hearings items on the agenda have been noticed and affidavits have been made a part of the case file. He briefed Council on

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the text amendment by Durham Public Schools to modify the current unified development ordinance provisions relating to temporary modular classroom units. This amendment would allow the Planning Department to issue a temporary use permit on an annual basis for any public or charter school. He stated the school would provide documentation on an annual basis as to the length of time the temporary modular units would be on site as well as having adequate parking on site. In addition, he noted the school would be required to do a stormwater impact analysis if modular units would be placed on impervious surface. He reported the Planning Commission recommended approval at its December 11th meeting and staff recommended approval of this request.

Mayor Bell opened the public hearing. There being no one to speak in support for or against this item, the Mayor closed the public hearing.

MOTION by Council Member Clement seconded by Mayor Pro Tempore Cole-McFadden to adopt an Ordinance Amending the Unified Development Ordinance, incorporating revisions to Article 5, Use Regulations was approved at 8:03 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Moffitt and Schewel. Noes: None. Absent: None.

Ordinance #14403

SUBJECT: Zoning Map Change - Southpoint Trails (Z1100017)

To conduct a public hearing to receive comments on the zoning map change for Southpoint Trails (Z1100017);

To adopt an Ordinance Amending the Unified Development Ordinance by taking the described property in zoning map change case Z1100017 out of Residential Rural (RR) and placing same in and establishing same as Planned Development Residential 6.040 (PDR 6.040); and

To adopt as support for its action on the proposed zoning map change the determinations that the action is not consistent with the Comprehensive Plan; however, is reasonable and in the public interest in light of information presented in the public hearing and in the accompanying agenda materials; or

Alternatively, in the event that a motion to approve the item fails, the Council adopts as support for its action on the proposed zoning map change the determination that this request is not consistent with the Comprehensive Plan and is neither reasonable nor in the public interest in light of information presented in the public hearing and in the accompanying agenda materials.

Staff Determination: Staff determines that this request is not consistent with the Comprehensive Plan; however is consistent with other adopted policies and ordinances.

Planning Commission Recommendation and Vote: Approval, 8 - 5 on July 10, 2012. The Planning Commission finds that the ordinance request is not consistent with the adopted

Comprehensive Plan. However, should the plan amendment be approved, the request would be consistent with the Comprehensive Plan. The Commission believes the request is reasonable and in the public interest and recommends approval based on comments received at the public hearing, the information in the staff report, and additional commitments proffered by the applicant.

[The site is located at 8512 NC 751 Highway, west side of NC 751 Highway, north of Stagecoach Road and south of Massey Chapel Road, PINs 0717-01-28-3437, -29-1326, -2079, -18-8624, -9997]

Note: Invalid protest petition filed.

Patrick Young, of the City/County Planning Department, briefed Council on the zoning map change for Southpoint Trails that would change the zoning designation of 27.887 acres located at 8512 NC 751 Highway, west side of NC 751 Highway, north of Stagecoach Road and south of Massey Chapel Road, from Residential Rural to Planned Development Residential. He stated this request would include up to 149 residential units and the development plan associated with this request includes text and graphic commitments provided in detail in the staff report. He gave a summary of the following commitments:

- dedication of right-of-way along NC 751 highway to accommodate a bicycle lane
- north- and south-bound turn lanes, a median
- A dedication of a greenway easement along with pedestrian access for Eagle Spur Trail
- a masonry wall in the northwest corner of the site, and a wood fence along NC 751 Highway

He stated staff has determined that this request is not consistent with the future land map, but is consistent with all other policies of the Comprehensive Plan and Unified Development Ordinance requirements. He stated the Planning Commission recommended approval at its July 10, 2012 meeting. On February 13th staff received the following additional commitments proffered by the applicant:

- 1) Reduce the density from 6.04 u/ac to 5.5 u/ac.
- 2) The developer shall provide a minimum of 5 units that are affordable to 80% of the median income.
- 3) Prior to the issuance of a certificate of occupancy, the developer shall:

NC 751 and site entrance #1

- A. Construct a northbound left-turn lane with adequate storage and appropriate tapers on NC 751 at the site entrance #1.

- B. Construct a southbound right-turn lane with adequate storage and appropriate tapers on NC 751. The right turn lane will be constructed outside the ultimate road widening of 751. (4 lanes with center median)

NC 751 and site entrance #2

- C. Construct a median (per NCDOT standards) along NC 751 to limit site entrance #2 to right-in/right-out access only.
- D. Construct a southbound right-turn lane with adequate storage and appropriate tapers on NC 751 at site entrance #2. The right turn lane will be constructed outside the ultimate road widening of 751. (4 lanes with center median); and
- 4) The developer shall construct a 4-lane divided roadway for the frontage of the site along NC 751, excluding the portion of the site frontage previously proffered by the 751 south development (zoning case #z08-03) approved by the county in 2011.

For clarification, Patrick Young stated the developer shall construct a 4-lane divided roadway prior to the first certificate of occupancy.

Mayor Bell opened the public hearing.

Proponents

Attorney Kenneth Spaulding, representing the applicant, spoke in support of zoning map change to rezone the property to allow the developer to build townhomes. He stated this request received support from residents who previously testified at the previous meeting and a majority of the Planning Commission. He stated the applicant would be proffering the following based on issues raised by Council at their meeting held on this item:

- 1) Reduction of the density from 6.04 units to 5.5 units per acre
- 2) A commitment to build a minimum of five affordable housing units
- 3) An increase in road improvements on NC 751
- 4) School contribution of \$500 per additional student

He mentioned this proposal would enhance and increase the tax base; benefit Durham Public Schools with voluntary contribution, improve 751 by making necessary road upgrades for the benefit of all Durham citizens and the traveling public completely paid for by the private developer with no cost to the taxpayers; address desire for an array of housing opportunities including affordable housing; and establish a variety of continued housing opportunities including townhomes for the changing demographics of Durham's population. He urged Council to support this request with the proffered committed elements and made comments about the invalid protest petition, meetings held with residents and site visits.

Dorothy Croom spoke in support of this zoning map change.

George Stanziale, representing the applicant, stated the applicant is committing \$500 per additional student to the Durham Public Schools system and additional road construction that would ensure that they are in compliance with the Comprehensive Plan policies--being under 100 percent capacity. He stated increasing the density [4 units to 5.5 units per acre] would result in a traffic reduction, school impacts, allow for more efficient use of utilities and roads, increase overall tax base by one half million dollars at build-out. He urged Council to consider this request.

Opponents

Ahmed Zarea, owner of the property, spoke against this zoning map change. He made comments about his proposal sent to the Durham City Council and staff. He asked the City Council to vote against this plan until further study is completed. He made a suggestion that Planning and Engineering staff from neighboring cities [Raleigh, Cary or Chapel Hill] be invited to share their ideas, indicated some of the residents are not in favor of this proposal and requested a meeting with Engineering, Planning staff, and Attorney Kenneth Spaulding for a very important discussion.

Reza Zarea, owner of property, stated at the beginning he was in favor of this proposal if the developer met all the requirements of making the area look much nicer and safer. He raised concerns with the fencing and the road which would disable his driveway—not able to turn left onto Highway 751 southbound. He stated he has not seen anything that he could visualize, made comments on his contact with Attorney Kenneth Spaulding and stated there are negative impacts with this proposal.

Ahmed Zarea, owner of the property, raised concerns with detour of traffic on Highway 751 from accidents that occur on I-40 and road capacity to handle traffic in the future.

Rebuttal

Attorney Kenneth Spaulding, representing the applicant, made comments about his site visit with owners and removal of median.

Mayor Pro Tempore Cole-McFadden asked Attorney Spaulding if he dealt with concerns raised by owners of property.

Attorney Kenneth Spaulding replied that they did. For clarification, the median was taken out as it relates to their driveways.

Bill Judge, of the Transportation Department, reported that staff would work with the applicant to shift the location of the northern entrance so that the median would not restrict access to the property across the street at the site plan stage.

Mayor Pro Tempore Cole-McFadden asked Mr. Zarea if the solution is acceptable.

Reza Zarea noted that this may be to his benefit, but he has not seen anything to-date.

Council Member Moffitt referenced the article in today's *News and Observer* about Raleigh's on the verge of approving their new Unified Development Ordinance. He read a statement highlighting his work on the Planning Commission, proffers made by the applicant especially affordable housing, the zoning and Comprehensive Plan. For this site, he stated that he would be voting no on this item since the requested zoning is too dense which is out of keeping with the vision of the Comprehensive Plan for tapered development in this area.

Council Member Catotti stated the affordable housing proffer was an important step in the right direction, but would have preferred the applicant to have requested a density bonus—the full 15 percent.

For clarification, George Stanziale, representing the applicant, stated the applicant would be proffering \$500 per ten additional students.

Council Member Catotti asked the applicant if he considered the four-lane construction further north of their property.

Attorney Kenneth Spaulding, representing the applicant, replied no. He referenced improvements that the applicant has proffered.

Council Member Catotti noted there would be an additional cost to taxpayers in the future because of additional traffic on Highway 751, reflected on comments in the *News and Observer* regarding townhome project and stated that she would be voting against this item due to density concerns.

Council Member Schewel expressed a concern with setting a density precedent and overriding the Comprehensive Plan.

Several members of Council supported the affordable housing density.

Council Member Brown stated this is a better plan than the previous one presented to Council. He raised a concern with the Comprehensive Plan that was adopted in 2005 highlighting that the Comprehensive Plan should be revisited, updated for this area and the economic development factor should be added. He explained why he would support this request.

Council thanked developers for proffers and held discussion on Comprehensive Plan, density around Southpoint Mall, affordable housing, density and widening of 751.

Bill Judge, of the Transportation Department, stated with additional proffers made tonight, the applicant would extend the widening proposed by the 751 South project northward through their project frontage to the northern boundary of their property. Also, he stated the taper would extend up to the Massey Chapel intersection which would be 400 to 500 feet to the intersection.

Robert Shunk, representing the applicant, stated the developer would improve the remainder of the frontage of their property up to the intersection of Massey Chapel Road.

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To address assurances that this proffered improvement would be done, Bill Judge, of the Transportation Department, stated the proffer would require the developer to provide payment for the future four-lane divided section, minus what the 751 South Development would do, for the frontage of the site to be completed prior to any certificate of occupancy.

For clarification about the proffer, Robert Shunk, representing the applicant, stated the four lanes would be along the frontage and the tapering would extend beyond the northern property line up to Massey Chapel Road.

Bill Judge, of the Transportation Department, stated the proffer is only for the frontage of the site, but typically NCDOT would not approve a widening encroachment agreement that would have the lane abruptly end so a taper would be required.

Regarding affordable housing, George Stanziale, representing the applicant, stated they are committing to a minimum of five units at 80 percent of median income. He proffered that the affording housing units would be fully intergraded---would not look or feel different and would be disbursed throughout the development. He stated at the site plan stage, they would decide if they can do more than five affordable housing units. He referenced the selling price for units -- \$250,000 and affordable units would be \$150,000 - \$160,000 or less.

Mayor Pro Tempore Cole-McFadden made a suggestion that Durham residents be given an opportunity for construction jobs.

Mayor Bell closed the public hearing.

MOTION by Council Member Clement seconded by Council Member Brown to receive comments on the zoning map change for Southpoint Trails (Z1100017);

To adopt an Ordinance Amending the Unified Development Ordinance by taking the described property in zoning map change case Z1100017 out of Residential Rural (RR) and placing same in and establishing same as Planned Development Residential 6.040 (PDR 6.040); and

To adopt as support for its action on the proposed zoning map change the determinations that the action is not consistent with the Comprehensive Plan; however, is reasonable and in the public interest in light of information presented in the public hearing and in the accompanying agenda materials was approved at 9:13 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown and Clement. Noes: Council Members Catotti, Moffitt and Schewel. Absent: None.

Ordinance #14404

SUBJECT: Zoning Map Change - Brier Creek Townes (Z1200009)

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To conduct a public hearing to receive comments on the zoning map change for Brier Creek Townes (Z1200009);

To adopt an Ordinance Amending the Unified Development Ordinance by taking the described property in zoning map change case Z1200009 out of Residential Rural (RR) and placing same in and establishing same as Planned Development Residential 8.000 (PDR 8.000); and

To adopt as support for its action on the proposed zoning map change the determinations that the action is consistent with the Comprehensive Plan and is reasonable and in the public interest in light of information presented in the public hearing and in the accompanying agenda materials; or

Alternatively, in the event that a motion to approve the item fails, the Council adopts as support for its action on the proposed zoning map change the determination that, notwithstanding its consistency with the Comprehensive Plan, the request is neither reasonable nor in the public interest in light of information presented in the public hearing and in the accompanying agenda materials.

Staff Determination: Staff determines that this request is consistent with the Comprehensive Plan and other adopted policies and ordinances.

Planning Commission Recommendation and Vote: Approval, 12-0 on January 8, 2013. The Planning Commission finds that the ordinance request is consistent with the adopted Comprehensive Plan. The Commission believes the request is reasonable and in the public interest and recommends approval based on comments received at the public hearing and the information in the staff report.

[The site is located at 805 and 901 Andrews Chapel Road, on the south side of Andrews Chapel Road near its southern terminus and straddling the Durham-Wake County line, PINs 0769-04-40-5459, 0769-04-41-7279].

Patrick Young, of the City/County Planning Department, briefed Council on the zoning map change for Brier Creek Townes. He stated this request would change the zoning designation of 33 acres located at 805 and 901 Andrews Chapel Road, on the south side of Andrews Chapel Road near its southern terminus at the Wake County line, from Residential Rural to Planned Development Residential 8.0. He stated a development plan is associated with this request and gave a summary of commitments to include a maximum 231 residential units, seven site access points, numerous transportation improvements including the extension of ACC Boulevard and right-of-way dedication improvements to Andrews Chapel Road. He stated staff has determined that this request is consistent with the Comprehensive Plan and other adopted policies and ordinances and the Planning Commission recommended approval at its January 8, 2013 meeting.

Mayor Bell opened the public hearing.

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Jarrold Edens, representing the applicant, spoke in support of this zoning map change. He stated that the Brier Creek site was annexed last year by the Council, applicant is proposing 231 townhomes and no opposition was noted at their neighborhood meeting in April.

No one spoke in opposition to this request.

Mayor Bell closed the public hearing.

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Brown to receive comments on the zoning map change for Brier Creek Townes (Z1200009);

To adopt an Ordinance Amending the Unified Development Ordinance by taking the described property in zoning map change case Z1200009 out of Residential Rural (RR) and placing same in and establishing same as Planned Development Residential 8.000 (PDR 8.000); and

To adopt as support for its action on the proposed zoning map change the determinations that the action is consistent with the Comprehensive Plan and is reasonable and in the public interest in light of information presented in the public hearing and in the accompanying agenda materials was approved at 9:16 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Moffitt and Schewel. Noes: None. Absent: None.

Ordinance #14405

SUBJECT: Consolidated Annexation Item - Montclair

To conduct a public hearing to receive comments on the Montclair Voluntary Annexation Petition (FY2012-05), Plan Amendment (A1200005), and Zoning Map Change (Z1200013);

To authorize the City Manager to enter into a water and sewer extension agreement with Weekly Homes, LLC;

To authorize the City Manager to modify the contract prior to execution provided that such modifications do not increase the dollar amount of the contract and do not significantly decrease the obligations of the contractor;

To adopt an Ordinance Annexing the Montclair development into the City of Durham effective March 31, 2013;

To authorize the City Manager to make a one-time debt service payment to the Parkwood VFD in connection with Montclair;

To adopt a Resolution to Change the Future Land Use Map of the Durham Comprehensive Plan from Very Low Density Residential (2 DU/Acre or Less) to Low Density Residential (4 DU/Acre or Less);

To adopt an Ordinance Amending the Unified Development Ordinance by taking the described property in zoning map change case Z1200013 out of Residential Rural (RR); F/J-B (County Jurisdiction) and placing same in and establishing same as Residential Rural with a development plan (RR(D)) and Planned Development Residential 2.870 (PDR 2.870); F/J-B (City Jurisdiction); and

To adopt as support for its action on the proposed zoning map change the determinations that the action is consistent with the Comprehensive Plan, should the plan amendment be approved, and is reasonable and in the public interest in light of information presented in the public hearing and in the accompanying agenda materials; or

Alternatively, in the event that a motion to approve the item fails, the Council adopts as support for its action on the proposed zoning map change the determination that, notwithstanding its consistency with the Comprehensive Plan, the request is neither reasonable nor in the public interest in light of information presented in the public hearing and in the accompanying agenda materials.

Patrick Young, of the City/County Planning Department, provided background on this item referencing the coordinated annexation policy adopted by Council in October 2012. He stated this consolidated annexation item for the Montclair development consists of four separate actions: a request for utility extension agreement (EA), a petition for voluntary annexation, an amendment to the future land use map of the comprehensive plan; and an initial zoning map change. He reported the proposed project site is approximately 19.40 acres located on the south side of Barbee Chapel Road, west of Farrington Mill Road and the project would allow a total of 53 single-family homes. Under the current County zoning, up to 19 single-family units could be developed on well and septic systems at this site. He stated the utility extension agreement would allow the developer to extend City water and sewer to the site to serve the proposed development. The Public Works Department, in consultation with the Department of Water Management, has determined that utility infrastructure is adequate to serve the proposed development, in conjunction with improvements that will be required by the developer if the proposed utility extension agreement is granted. He stated the Budget and Management Services Department conducted a fiscal analysis associated with the voluntary annexation petition which indicated that net revenues to the City would exceed expenditures. He noted the proposed Comprehensive Plan Amendment would change the Future land use map designation from Very Low Density Residential (2 DU/Ac. or less) to Low Density Residential (4 DU/Ac. or less). The residential density requested by the applicant is higher than the density recommended in the Comprehensive Plan. Based on inconsistency with Future Land Use Map (FLUM) of the Comprehensive Plan, staff recommended denial. He said the applicant in this case has requested an initial zoning designation of Planned Development Residential 2.870 and Rural *Residential* with a development plan. He stated the Planning Commission recommended approval of the Comprehensive Plan amendment and zoning map change at its December 11, 2012 meeting.

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Mayor Bell opened the public hearing.

Jarrold Edens, representing the applicant, spoke in support of this project. He stated the applicant is proposing a land use change with a density of 2.87 units a acre—53 lots, to build a pump station and two road widening--left turn lanes on Barbee Chapel Road and Farrington Mill Road. He pointed out that there would be 23 percent tree coverage, no undue stress or strain on city services, city water is available to the site currently along Barbee Chapel Road, would provide perimeter buffers around the property, cost benefit analysis shows a net gain to the City, and Planning Commission approved both items. He noted there were two meetings with no opposition to the project, stated the regional pump station would service 156 acres that would not perk and there are septic issues in the area that the pump station would fix in the future.

Bishop Haley, representing Barbee Chapel Church, spoke in support of this item. He pointed out that the congregation has been in this location for 148 years and the need for a fellowship hall and classroom space. He stated Weekley Homes would provide the last option for the church to expand. He indicated that the applicant would provide a stormwater runoff pond that would cover anticipated runoff requirements for additional parking and building for classrooms, fellowship hall and offices and would provide easy access for connecting to the sewer. He referenced that church has been connected to City water and commented on neighbors' failing sewer systems. He urged Council to approve this project to fulfill the church and community needs.

Juliann Tenney spoke in support of this item. She stated the continuation of the neighborhood is threatened as a result of failing septic systems and other issues.

Michael Hining spoke in favor of this item due to his failing septic system.

Mayor Bell closed the public hearing.

Council Member Moffitt stated that he would be voting in support of this item to amend the Comprehensive Plan.

Council Member Catotti stated she had mixed feelings about this project, but many of her concerns have been addressed. She referenced that her concern was on satellite annexation. She explained why she would be supporting this request referencing that the site has water and would be 2,000 feet from the City. She stated she stands by her previous concerns, but considers this a small exception for a reasonable project and would not welcome additional changes in density for that area.

MOTION by Council Member Clement seconded by Mayor Pro Tempore Cole-McFadden to receive comments on the Montclair Voluntary Annexation Petition (FY2012-05), Plan Amendment (A1200005), and Zoning Map Change (Z1200013);

To authorize the City Manager to enter into a water and sewer extension agreement with Weekley Homes, LLC;

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To authorize the City Manager to modify the contract prior to execution provided that such modifications do not increase the dollar amount of the contract and do not significantly decrease the obligations of the contractor;

To adopt an Ordinance Annexing the Montclair development into the City of Durham effective March 31, 2013;

To authorize the City Manager to make a one-time debt service payment to the Parkwood VFD in connection with Montclair;

To adopt a Resolution to Change the Future Land Use Map of the Durham Comprehensive Plan from Very Low Density Residential (2 DU/Acre or Less) to Low Density Residential (4 DU/Acre or Less);

To adopt an Ordinance Amending the Unified Development Ordinance by taking the described property in zoning map change case Z1200013 out of Residential Rural (RR); F/J-B (County Jurisdiction) and placing same in and establishing same as Residential Rural with a development plan (RR(D)) and Planned Development Residential 2.870 (PDR 2.870); F/J-B (City Jurisdiction); and

To adopt as support for its action on the proposed zoning map change the determinations that the action is consistent with the Comprehensive Plan, should the plan amendment be approved, and is reasonable and in the public interest in light of information presented in the public hearing and in the accompanying agenda materials was approved at 9:32 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Moffitt and Schewel. Noes: None. Absent: None.

**Ordinance #s 14406 and 14407
Resolution #9845**

[ITEM PULLED FROM CONSENT AGENDA]

SUBJECT: Contract with River Works, Inc. for Stream Restoration Project Invasive Exotic Vegetation Treatment

MOTION by Mayor Pro Tempore Cole-McFadden seconded by Council Member Clement to authorize the City Manager to execute the contract with River Works, Inc. for stream restoration project invasive exotic vegetation treatment in the amount of \$74,325.00;

To establish a contingency in the amount of \$11,150.00; and

To authorize the City Manager to modify the contract, as long as the total contract amount does not exceed \$85,475.00 or substantially change the intent or material conditions of the contract approved by City Council was approved at 9:32 p.m. by the following vote: Ayes: Mayor Bell,

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Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti, Clement, Moffitt and Schewel. Noes: None. Absent: None.

There being no further business to come before the City Council, the meeting was adjourned at 9:33 p.m.

Linda E. Bratcher, CMC
Deputy City Clerk

D. Ann Gray, MMC, NCCMC
City Clerk

**DURHAM, NORTH CAROLINA
WEDNESDAY, JANUARY 23, 2013
8:00 A.M.**

Pursuant to the proper notification, the Durham City Council held a special meeting on the above date and time in the Committee Room in City Hall with the following members present: Mayor William V. Bell, Mayor Pro Tempore Cora Cole-McFadden and Council Members Eugene Brown, Diane Cattoti, Don Moffitt and Steve Schewel Absent: Council Member Howard Clement III.

Durham Delegation Present: Representative Larry D. Hall (NC 29-Durham); Senator Floyd McKissick, Jr. (NC 20-Durham & Granville); Representative Valerie P. Foushee (NC 50-Durham & Orange); Representative H.M. "Mickey" Michaux (NC 31-Durham); Representative Paul Luebke (NC 30-Durham); and Senator J. Michael Woodard (NC 22-Caswell, Durham & Person).

City Staff Present: City Manager Thomas Bonfield, City Attorney Patrick Baker, Deputy City Managers Keith Chadwell, William Ferguson and Wanda Page, Finance Director David Boyd, Public Works Director Marvin Williams, Public Affairs Director Beverly Thompson, Police Chief Jose Lopez, Fire Department Response Specialist Travis Melvin, Assistant Public Works Director Paul Wiebke, Senior Assistant City Attorney Don O'Toole, Assistant City/County Planning Director Pat Young, General Services Director Joel Reitzer, Contract Administrator Jina Propst, Collections Supervisor Paul Mason, Water Quality Manager John Cox, Financial Operational Manager Susan Sandhoff, Assistant Water Quality Manager Michelle Woolfolk, Senior Assistant to the City Manager Karmisha Wallace and Senior Executive Assistant Tonette Amos.

Also in attendance: Chief District Judge Marcia Morey (14th District) and Assistant County Manager Deborah Craig-Ray.

Subject: Legislative Breakfast with Durham Delegation

The special meeting was called to order by Mayor Pro Tempore Cole-McFadden and she thanked everyone for attending. Also she made favorable remarks about individuals who represent Durham in the General Assembly and asked the Durham Delegation to introduce themselves.

Mayor Pro Tempore Cole-McFadden introduced Senior Assistant to City Manager Karmisha Wallace to give the presentation on behalf of the City.

Karmisha Wallace welcomed everyone to the Annual Legislative Breakfast and presented the "2013 Long Session Legislative Agenda" that was distributed prior to the meeting. She stated that all items have been reviewed by City's administration, including the City Attorney's Office, and approved by City Council.

Subject: Collection of Civil Penalties – General Bill/Statewide Request

Karmisha Wallace, of the City Manager's Office, stated that the City was requesting an amendment to the General Statute to seek authority to negotiate an agreement with Durham Public Schools to retain an amount that may exceed the current limit of 10%. Ms. Wallace stated that draft legislation was included in handout.

Responding to several questions from Representative Larry Hall, Finance Director David Boyd stated that the average cost by case or categories depends on what is being collected. The current contract that the City has entered into, the vendor keeps 19% of whatever they collect. The City loses 9% of whatever is collected. Other internal collections may be sufficient with the 10%, but the City is looking for the ability to come up with an agreement of what the actual costs are but not to exceed a certain amount. Civil Penalties imposed are hard to collect and he gave an example of penalties that equal \$1 million. Civil Penalties have been minimum because of the issue at hand. He could not give a specific amount. He stated that he would need to do research. No discussion with the N.C. League has been held and he did not know of any jurisdictions that have this problem.

Representative Paul Luebke stated that it would be helpful to know if League supports issue.

Ms. Wallace stated that she has had conversation with League and they have not decided to include it with their agenda.

Senator Floyd McKissick asked staff to check with Greensboro, Charlotte, High Point and Winston-Salem to see what they are doing. He stated that they need to know the lost income that cities are suffering. He gave an example of the contingency fee that was not approved last year.

Subject: Beer & Wine Licenses Fees - General Bill/Statewide Request

Senior Assistant to the City Manager Karmisha Wallace stated that this item was brought forward from a previous agenda which received support from the N.C. League, but was not successful in the General Assembly. Administration has decided to put in the request again for reconsideration and there is information included in the backup material on other states.

Senator Floyd McKissick made comments on why the item was not approved and stated it may be challenging.

Responding to Representative Paul Luebke's question on why no information is included about other cities in North Carolina, Finance Director David Boyd stated that fees are set by the state statute and all municipalities charge the same amount.

Subject: Annexation of Donut Holes and Rights-of-Way – General Bill/Statewide Request

Senior Assistant to the City Manager Karmisha Wallace said the City is seeking legislation removing the referendum requirement for city-initiated annexation of “donut holes and rights-of-way. The primary concern is that there are no registered voters in those areas. She referenced maps that were included as part of her handouts.

Senior Assistant City Attorney Don O’Toole explained the difference between donut holes and rights-of-way. Justification is the Fire Department can better serve in its delivery. In 2012 Session, the right-of-way issue with petitions required a referendum for involuntary annexation. The issue is that no registered voters live in rights-of-way. Attorney O’Toole explained how the process worked. He also shared that the “donut holes” were inadvertently included in the involuntary annexations that would require a referendum. This is also part of the League stand. He did state that residents live in “donut holes”.

(Note: Donut hole was defined is an area that is completely encompassed by the City’s jurisdiction. Right-of-way was defined as an area that met certain criteria that are in the involuntary annexation statutes.)

Fire Department Response Specialist Travis Melvin gave examples of how important the issue is as it relates to emergency calls.

Senator Michael Woodard confirmed the importance of emergency response to certain areas that can cause delay in emergency response delivery.

Subject: Pretrial Release & Bail Bonding – General Bill/Statewide Request

Senior Assistant to the City Manager Karmisha Wallace stated that the item was brought forward to the Delegation last year and some additional work was requested that would be more appealing to members of the General Assembly.

City Attorney Patrick Baker gave an overview of handout entitled “15A-533. Right to pretrial release in capital and noncapital cases” highlighting changes and additions that were in red. He stated that the language was taken from Drug Trafficking and Street Gang Offenses legislation.

Representative Mickey Michaux expressed his concerns about the legislation as it is printed. He gave examples of how the law is unfavorable as he sees it.

Senator Floyd McKissick expressed concerns about firearm offenses, innocent until found guilty, cost of keeping individuals in jail, and the lack of statistics not provided. He stated that the legislation as printed needed to be tweaked. He was informed by City Attorney Baker that firearm offenses are located in Chapter 14. He stated that statistical information would be helpful.

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Representative Larry Hall also stated that the legislation needs to be tweaked.

Mayor Bell expressed his concern over violence committed by guns, the revolving door at the jail and amount of bonds. He stated that changes were made based on the comments expressed the prior year by Representative Michaux. Mayor Bell stated that no statistics from the Magistrates' office was provided, but he did ask the City Manager for the information.

Representative Mickey Michaux explained how the bill was originally created. He stated that a felony and horrendous crimes must be incorporated into the legislation.

Senator Floyd McKissick expressed again concern over reasonable cause.

City Attorney Patrick Baker explained how the process would work.

Judge Marcia Morey expressed concern of rebuttable presumption based on misdemeanor charges and denying magistrates the authority to set bonds. She also explained how judges and magistrates make decisions on setting appropriate bonds. Gun violence and repeat gun violence are serious offenses.

Senator Floyd McKissick asked the Mayor could Judge Morey concerns be incorporated into the legislation.

Mayor Bell stated that if the legislation needs to be tweaked to pass, then it would be done.

Representative Larry Hall stated that his concern regarding firearms charges and who set bonds would be addressed based on what has been said.

Attorney Baker and Representative Michaux agreed to meet after the meeting to finalize the legislation.

Subject: Youth Offenders and Firearms – Advocacy Request

A briefing of this item was given by Judge Marcia Morey. She went over handout entitled "Proposed changes for Juvenile Code regarding firearm offenses" that was distributed prior to the meeting. She asked the delegation for their support. She also went over a memo from Brian Jones that was also included as part of the package. When asked how she voted on the item at the Durham Crime Cabinet, she informed the group that she abstained.

Representative Mickey Michaux stated some guidance is needed from the change.

Senator Floyd McKissick made comments about individuals being incarcerated.

Police Chief Jose Lopez gave examples of gun violence and stated that we need to focus on community safety. He stated he was in support of Mayor's legislation and keeping our

community safe. Chief Lopez also explained other missiles at a muzzle velocity of at least 600 feet per second as a bb gun and/sling shot.

Subject: Jordan & Falls Lake Rules – Advocacy Request

Senior Assistant to the City Manager Karmisha Wallace stated that this was an ongoing item and no back-up material was included.

Assistant Director of Public Works Paul Wiebke briefed the group on this item. The City of Durham is asking Durham Delegation to support specific modifications to the Jordan Lake Rules, including those that transfer program implementation to the State or provide extended timeframes to determine nutrient credits from storm water control. The City is working with the N.C. League of Municipalities. Also discussion was held on the following items: Compliance Modification Deadline -2012; Deadline for Existing Development; Buffers, and Responses from other cities and companies. Mr. Wiebke stated that this item is currently being routed through internal system for updates and would be provided to delegation when completed. New technology would be included with the updated information.

Subject: Zoning Public Hearings – Local Bill Request

Senior Assistant to the City Manager Karmisha Wallace stated the request is to seek authority for the Durham City-County Planning Commission to conduct public hearings on zoning map changes on property outside the Durham city limits prior to annexation action by the Durham City Council. This will coordinate the annexation process. This will save time and resources and is consistent with recent City Council action to coordinate utilities and annexations.

Subject: Design-Build Authority – Local Bill Request

Senior Assistant to the City Manager Karmisha Wallace stated that proposed draft was sent electronically and included in the handouts distributed prior to meeting.

Representative Mickey Michaux expressed concern about bid requirements and letter of inclusiveness.

Senator Floyd McKissick expressed concern regarding “without limitation” that is mentioned in the language. He stated that it may need to be removed.

City Attorney Patrick Baker said he would get with the attorney in his office who drafted the legislation to see why it is included in the legislation.

Ms. Wallace stated the administration is not recommending at this point that we use “Design-Build-Maintain” for these facilities, but wanted to have as an option.

Representative Michaux stated that he is concerned about the aspect of the Affirmative Action portion. He stated contractors are not using the minimum participation by other groups in Durham.

Responding to Mayor Pro Tempore Cora Cole-McFadden's question, General Services Director Joel Reitzer stated that there are pre-qualifications in place where Affirmative Action requirements are considered as part of the Equal Opportunity/Equity Assurance Department. There could be a more strict qualification based selection process of construction delivery. He stated that this process has been used by the City in construction management projects and good results were achieved in participation. He closed by stating problems still occur in achieving goals as it relates to the lowest bid award.

Subject: Advocacy Requests - Clean Water Trust Fund, N.C. League of Municipalities Advocacy Goals, and Metro Mayors Coalition Legislative Agenda

Senior Assistant to the City Manager Karmisha Wallace briefly went over the following advocacy requests that were on the agenda: Clean Water Trust Fund, N.C. League of Municipalities Advocacy Goals, and Metro Mayors Coalition Legislative Agenda.

Comments were made about the raid on the Clean Water Trust Fund by Representative Mickey Michaux. In past, it was kept at \$10 million, but funds were taken last year and he said he doesn't know how it will stand this year, but recognized this problem needs attention.

Ms. Wallace stated that projects from the City and County have benefits from those funds. The item will be addressed by the Durham City Council at its next meeting.

Ms. Wallace stated that the City supports the NCLM's 2013-14 Advocacy Goals that are included with the handouts. NCLM will adopt the final Advocacy Agenda at the January 14, 2013 Advocacy Goals Conference. The City will include in their legislative agenda to support the goals and priorities of the N.C. League of Municipalities.

Ms. Wallace stated that the City supports the Legislative Agenda of the Metro Mayors Coalition. The final agenda has been adopted and included in documents distributed prior to meeting.

Ms. Wallace thanked Durham's Delegation for attending and stated that the City would submit the items that were discussed to them.

Representatives Mickey Michaux and Valerie Foushee stated that 2013 will be a more challenging year.

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There being no further business to come before the council and delegation, the meeting adjourned at 9:38 a.m.

Tonette Amos
Senior Executive Assistant

**DURHAM, NORTH CAROLINA
MONDAY, JANUARY 7, 2013
5:30 P.M.**

Pursuant to the proper notification, the Durham City Council held a special meeting on the above date and time in the Committee Room in City Hall with the following members present: Mayor William V. "Bill" Bell, Mayor Pro Tempore Cora Cole-McFadden and Council Members Eugene Brown, Diane Catotti and Steve Schewel. Absent: Council Member Howard Clement III.

Also present: City Manager Thomas Bonfield, City Attorney Patrick Baker and City Clerk D. Ann Gray.

The meeting was called to order by Mayor Bell.

SUBJECT: SELECTION OF WARD 3 APPLICANT

The City Council thanked all of the applicants for applying and interviewing for the Ward 3 vacancy.

Mayor Pro Tempore Cole-McFadden spoke in support of appointing Anita Daniels and the need to have more female representation on the City Council.

Council Members Schewel and Catotti spoke in support of appointing Don Moffitt to the vacant Ward 3 seat stating that his qualifications/expertise closely matched those of former Council Member Mike Woodard.

City Clerk Gray distributed ballots to the Council Members to select the applicant of their chose to fill the City Council Ward 3 vacancy.

City Clerk Gray announced that Don Moffitt received 3 votes and Anita Daniels received 2 votes.

Council Members Brown, Catotti and Schewel voted for Applicant Don Moffitt, Mayor Bell and Mayor Pro Tempore Cole-McFadden voted for Applicant Anita Daniels.

Mayor Bell asked for a motion to appoint Don Moffitt by unanimous consent.

MOTION by Council Member Catotti seconded by Council Member Brown to appoint Don Moffitt to the City Council Ward 3 vacancy was approved at 5:42 p.m. by the following vote: Ayes: Mayor Bell, Mayor Pro Tempore Cole-McFadden and Council Members Brown, Catotti and Schewel. Noes: None. Absent: Council Member Clement.

At this time, City Clerk Gray administered the oath of office to Don Moffitt as the newly appointed member of the City Council.

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Council Member Moffitt said he was honored and humbled to fill former Council Member Woodard's seat and stated he would work hard to honor the work of Mr. Woodard to represent all the citizens of Durham.

There being no further business to come before the council, the meeting was adjourned at 5:45 p.m.

D. Ann Gray, MMC, NCCMC
City Clerk

**DURHAM, NORTH CAROLINA
FRIDAY, JANUARY 4, 2013
12 NOON**

Pursuant to the proper notification, the Durham City Council held a special meeting on the above date and time in the Committee Room located in City Hall with the following members present: Mayor William V. "Bill" Bell, Mayor Pro Tempore Cora-Cole McFadden and Council Members Eugene Brown, Diane Catotti, Howard Clement, III and Steve Schewel. Absent: None.

Also present: City Manager Thomas Bonfield, City Attorney Patrick Baker and City Clerk D. Ann Gray.

The meeting was called to order by Mayor Bell.

SUBJECT: INTERVIEW OF WARD 3 APPLICANTS

The Durham City Council conducted interviews separately with Don Moffitt, Anita Daniels, Edward Kwon and Jason Melehani who applied for the Ward 3 City Council vacancy formerly held by Mike Woodard.

Questions asked of the candidates dealt with affordable housing; ways to end homeless in Durham; crime abatement; public transit; development and land use policy; possible jobs creation benefits/751 South project; diversity; reducing poverty in Durham; thoughts on city/county merger, their impression of Durham and strengths they would bring to the City Council.

Note: An audio recording of the 4 hour interviews is on file in the City Clerk's Office.

The Mayor and council thanked each of the candidates for applying for the vacant seat.

Mayor Bell stated that the City Council will be meeting on Monday, January 7, 2013 at 5:30 p.m. to select an applicant for the Ward 3 seat.

There being no further business to come before the council, the meeting was adjourned at 3:50 p.m.

D. Ann Gray, MMC, NCCMC
City Clerk